

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2632

Introduced by Assembly Member Maienschein

February 21, 2014

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871, of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2632, as amended, Maienschein. Care facilities.

Under existing law, the State Department of Social Services licenses and regulates, among other things, community care facilities, *foster family home or certified family home*, residential care facilities for persons with a chronic, life-threatening illness, residential care facilities for the elderly, and child day cares. Existing law requires the department, prior to issuing a license or special permit to operate any of those facilities, to secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person, as specified, has been convicted of a crime other than a minor traffic violation, or arrested for certain crimes, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. *Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from the department prior to his or her employment, residence, or initial presence in those facilities listed above.* Existing law prohibits the department from using a record of arrest to deny, revoke, or terminate any application, license, employment, or residence

unless the department investigates the incident and secures evidence that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

This bill would prohibit the department, with regard to those facilities, from issuing a criminal record clearance to a ~~person with a record of an arrest prior to the department's completion of an investigation of that arrest record.~~ *person who has been arrested, and that arrest is pending investigation or conviction, for specified crimes prior to the department's completion of an investigation of the incident to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the Legislature
9 supports the use of the fingerprint live-scan technology, as
10 identified in the long-range plan of the Department of Justice for
11 fully automating the processing of fingerprints and other data by
12 the year 1999, otherwise known as the California Crime
13 Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose
16 contact with community care clients may pose a risk to the clients'
17 health and safety. An individual shall be required to obtain either
18 a criminal record clearance or a criminal record exemption from
19 the State Department of Social Services before his or her initial
20 presence in a community care facility.

21 (a) (1) Before issuing a license or special permit to any person
22 or persons to operate or manage a community care facility, the
23 State Department of Social Services shall secure from an

1 appropriate law enforcement agency a criminal record to determine
2 whether the applicant or any other person specified in subdivision
3 (b) has ever been convicted of a crime other than a minor traffic
4 violation or arrested for any crime specified in Section 290 of the
5 Penal Code, for violating Section 245 or 273.5, of the Penal Code,
6 subdivision (b) of Section 273a of the Penal Code, or, prior to
7 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
8 or for any crime for which the department cannot grant an
9 exemption if the person was convicted and the person has not been
10 exonerated.

11 (2) The criminal history information shall include the full
12 criminal record, if any, of those persons, and subsequent arrest
13 information pursuant to Section 11105.2 of the Penal Code.

14 (3) Except during the 2003–04 to the 2014–15 fiscal years,
15 inclusive, neither the Department of Justice nor the State
16 Department of Social Services may charge a fee for the
17 fingerprinting of an applicant for a license or special permit to
18 operate a facility providing nonmedical board, room, and care for
19 six or less children or for obtaining a criminal record of the
20 applicant pursuant to this section.

21 (4) The following shall apply to the criminal record information:

22 (A) If the State Department of Social Services finds that the
23 applicant, or any other person specified in subdivision (b), has
24 been convicted of a crime other than a minor traffic violation, the
25 application shall be denied, unless the director grants an exemption
26 pursuant to subdivision (g).

27 (B) If the State Department of Social Services finds that the
28 applicant, or any other person specified in subdivision ~~(b)~~ (b), is
29 awaiting trial for a crime other than a minor traffic violation, the
30 State Department of Social Services may cease processing the
31 application until the conclusion of the trial.

32 (C) If no criminal record information has been recorded, the
33 Department of Justice shall provide the applicant and the State
34 Department of Social Services with a statement of that fact.

35 (D) If the State Department of Social Services finds after
36 licensure that the licensee, or any other person specified in
37 paragraph (1) of subdivision (b), has been convicted of a crime
38 other than a minor traffic violation, the license may be revoked,
39 unless the director grants an exemption pursuant to subdivision
40 (g).

1 (E) An applicant and any other person specified in subdivision
2 (b) shall submit fingerprint images and related information to the
3 Department of Justice for the purpose of searching the criminal
4 records of the Federal Bureau of Investigation, in addition to the
5 criminal records search required by this subdivision. If an applicant
6 and all other persons described in subdivision (b) meet all of the
7 conditions for licensure, except receipt of the Federal Bureau of
8 Investigation's criminal offender record information search
9 response for the applicant or any of the persons described in
10 subdivision (b), the department may issue a license if the applicant
11 and each person described in subdivision (b) has signed and
12 submitted a statement that he or she has never been convicted of
13 a crime in the United States, other than a traffic infraction, as
14 prescribed in paragraph (1) of subdivision (a) of Section 42001 of
15 the Vehicle Code. If, after licensure, the department determines
16 that the licensee or any other person specified in subdivision (b)
17 has a criminal record, the license may be revoked pursuant to
18 Section 1550. The department may also suspend the license
19 pending an administrative hearing pursuant to Section 1550.5.

20 (F) The State Department of Social Services shall develop
21 procedures to provide the individual's state and federal criminal
22 history information with the written notification of his or her
23 exemption denial or revocation based on the criminal record.
24 Receipt of the criminal history information shall be optional on
25 the part of the individual, as set forth in the agency's procedures.
26 The procedure shall protect the confidentiality and privacy of the
27 individual's record, and the criminal history information shall not
28 be made available to the employer.

29 (G) Notwithstanding any other law, the department is authorized
30 to provide an individual with a copy of his or her state or federal
31 level criminal offender record information search response as
32 provided to that department by the Department of Justice if the
33 department has denied a criminal background clearance based on
34 this information and the individual makes a written request to the
35 department for a copy specifying an address to which it is to be
36 sent. The state or federal level criminal offender record information
37 search response shall not be modified or altered from its form or
38 content as provided by the Department of Justice and shall be
39 provided to the address specified by the individual in his or her

1 written request. The department shall retain a copy of the
2 individual's written request and the response and date provided.

3 (b) (1) In addition to the applicant, this section shall be
4 applicable to criminal convictions of the following persons:

5 (A) Adults responsible for administration or direct supervision
6 of staff.

7 (B) Any person, other than a client, residing in the facility.

8 (C) Any person who provides client assistance in dressing,
9 grooming, bathing, or personal hygiene. Any nurse assistant or
10 home health aide meeting the requirements of Section 1338.5 or
11 1736.6, respectively, who is not employed, retained, or contracted
12 by the licensee, and who has been certified or recertified on or
13 after July 1, 1998, shall be deemed to meet the criminal record
14 clearance requirements of this section. A certified nurse assistant
15 and certified home health aide who will be providing client
16 assistance and who falls under this exemption shall provide one
17 copy of his or her current certification, prior to providing care, to
18 the community care facility. The facility shall maintain the copy
19 of the certification on file as long as care is being provided by the
20 certified nurse assistant or certified home health aide at the facility.
21 Nothing in this paragraph restricts the right of the department to
22 exclude a certified nurse assistant or certified home health aide
23 from a licensed community care facility pursuant to Section 1558.

24 (D) Any staff person, volunteer, or employee who has contact
25 with the clients.

26 (E) If the applicant is a firm, partnership, association, or
27 corporation, the chief executive officer or other person serving in
28 like capacity.

29 (F) Additional officers of the governing body of the applicant,
30 or other persons with a financial interest in the applicant, as
31 determined necessary by the department by regulation. The criteria
32 used in the development of these regulations shall be based on the
33 person's capability to exercise substantial influence over the
34 operation of the facility.

35 (2) The following persons are exempt from the requirements
36 applicable under paragraph (1):

37 (A) A medical professional as defined in department regulations
38 who holds a valid license or certification from the person's
39 governing California medical care regulatory entity and who is

- 1 not employed, retained, or contracted by the licensee if all of the
2 following apply:
- 3 (i) The criminal record of the person has been cleared as a
4 condition of licensure or certification by the person's governing
5 California medical care regulatory entity.
- 6 (ii) The person is providing time-limited specialized clinical
7 care or services.
- 8 (iii) The person is providing care or services within the person's
9 scope of practice.
- 10 (iv) The person is not a community care facility licensee or an
11 employee of the facility.
- 12 (B) A third-party repair person or similar retained contractor if
13 all of the following apply:
- 14 (i) The person is hired for a defined, time-limited job.
- 15 (ii) The person is not left alone with clients.
- 16 (iii) When clients are present in the room in which the repair
17 person or contractor is working, a staff person who has a criminal
18 record clearance or exemption is also present.
- 19 (C) Employees of a licensed home health agency and other
20 members of licensed hospice interdisciplinary teams who have a
21 contract with a client or resident of the facility and are in the
22 facility at the request of that client or resident's legal
23 decisionmaker. The exemption does not apply to a person who is
24 a community care facility licensee or an employee of the facility.
- 25 (D) Clergy and other spiritual caregivers who are performing
26 services in common areas of the community care facility or who
27 are advising an individual client at the request of, or with the
28 permission of, the client or legal decisionmaker, are exempt from
29 fingerprint and criminal background check requirements imposed
30 by community care licensing. This exemption does not apply to a
31 person who is a community care licensee or employee of the
32 facility.
- 33 (E) Members of fraternal, service, or similar organizations who
34 conduct group activities for clients if all of the following apply:
- 35 (i) Members are not left alone with clients.
- 36 (ii) Members do not transport clients off the facility premises.
- 37 (iii) The same organization does not conduct group activities
38 for clients more often than defined by the department's regulations.
- 39 (3) In addition to the exemptions in paragraph (2), the following
40 persons in foster family homes, certified family homes, and small

1 family homes are exempt from the requirements applicable under
2 paragraph (1):

3 (A) Adult friends and family of the licensed or certified foster
4 parent, who come into the home to visit for a length of time no
5 longer than defined by the department in regulations, provided
6 that the adult friends and family of the licensee are not left alone
7 with the foster children. However, the licensee, acting as a
8 reasonable and prudent parent, as defined in paragraph (2) of
9 subdivision (a) of Section 362.04 of the Welfare and Institutions
10 Code, may allow his or her adult friends and family to provide
11 short-term care to the foster child and act as an appropriate
12 occasional short-term babysitter for the child.

13 (B) Parents of a foster child's friend when the foster child is
14 visiting the friend's home and the friend, licensed or certified foster
15 parent, or both are also present. However, the licensee, acting as
16 a reasonable and prudent parent, may allow the parent of the foster
17 child's friend to act as an appropriate short-term babysitter for the
18 child without the friend being present.

19 (C) Individuals who are engaged by any licensed or certified
20 foster parent to provide short-term care to the child for periods not
21 to exceed 24 hours. Caregivers shall use a reasonable and prudent
22 parent standard in selecting appropriate individuals to act as
23 appropriate occasional short-term babysitters.

24 (4) In addition to the exemptions specified in paragraph (2), the
25 following persons in adult day care and adult day support centers
26 are exempt from the requirements applicable under paragraph (1):

27 (A) Unless contraindicated by the client's individualized
28 program plan (IPP) or needs and service plan, a spouse, significant
29 other, relative, or close friend of a client, or an attendant or a
30 facilitator for a client with a developmental disability if the
31 attendant or facilitator is not employed, retained, or contracted by
32 the licensee. This exemption applies only if the person is visiting
33 the client or providing direct care and supervision to the client.

34 (B) A volunteer if all of the following applies:

35 (i) The volunteer is supervised by the licensee or a facility
36 employee with a criminal record clearance or exemption.

37 (ii) The volunteer is never left alone with clients.

38 (iii) The volunteer does not provide any client assistance with
39 dressing, grooming, bathing, or personal hygiene other than
40 washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, a person specified in subdivision (b) who is not exempted from fingerprinting shall obtain either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g) from the State Department of Social Services prior to employment, residence, or initial presence in the facility. A person specified in subdivision (b) who is not exempt from fingerprinting shall be fingerprinted and shall sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or comply with paragraph (1) of subdivision (h). These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to prohibit the employment, residence, or initial presence of a person specified in subdivision (b) who is not exempt from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g) or to comply with paragraph (1) of subdivision

1 (h), as required in this section, shall result in the citation of a
2 deficiency and the immediate assessment of civil penalties in the
3 amount of one hundred dollars (\$100) per violation per day for a
4 maximum of five days, unless the violation is a second or
5 subsequent violation within a 12-month period in which case the
6 civil penalties shall be in the amount of one hundred dollars (\$100)
7 per violation for a maximum of 30 days, and shall be grounds for
8 disciplining the licensee pursuant to Section 1550. The department
9 may assess civil penalties for continued violations as permitted by
10 Section 1548. The fingerprint images and related information shall
11 then be submitted to the Department of Justice for processing.
12 Upon request of the licensee, who shall enclose a self-addressed
13 stamped postcard for this purpose, the Department of Justice shall
14 verify receipt of the fingerprints.

15 (2) Within 14 calendar days of the receipt of the fingerprint
16 images, the Department of Justice shall notify the State Department
17 of Social Services of the criminal record information, as provided
18 for in subdivision (a). If no criminal record information has been
19 recorded, the Department of Justice shall provide the licensee and
20 the State Department of Social Services with a statement of that
21 fact within 14 calendar days of receipt of the fingerprint images.
22 Documentation of the individual's clearance or exemption from
23 disqualification shall be maintained by the licensee and be available
24 for inspection. If new fingerprint images are required for
25 processing, the Department of Justice shall, within 14 calendar
26 days from the date of receipt of the fingerprints, notify the licensee
27 that the fingerprints were illegible, the Department of Justice shall
28 notify the State Department of Social Services, as required by
29 Section 1522.04, and shall also notify the licensee by mail, within
30 14 days of electronic transmission of the fingerprints to the
31 Department of Justice, if the person has no criminal history
32 recorded. A violation of the regulations adopted pursuant to Section
33 1522.04 shall result in the citation of a deficiency and an immediate
34 assessment of civil penalties in the amount of one hundred dollars
35 (\$100) per violation per day for a maximum of five days, unless
36 the violation is a second or subsequent violation within a 12-month
37 period in which case the civil penalties shall be in the amount of
38 one hundred dollars (\$100) per violation for a maximum of 30
39 days, and shall be grounds for disciplining the licensee pursuant

1 to Section 1550. The department may assess civil penalties for
2 continued violations as permitted by Section 1548.

3 (3) Except for persons specified in subdivision (b) who are
4 exempt from fingerprinting, the licensee shall endeavor to ascertain
5 the previous employment history of persons required to be
6 fingerprinted. If it is determined by the State Department of Social
7 Services, on the basis of the fingerprint images and related
8 information submitted to the Department of Justice, that subsequent
9 to obtaining a criminal record clearance or exemption from
10 disqualification pursuant to subdivision (g), the person has been
11 convicted of, or is awaiting trial for, a sex offense against a minor,
12 or has been convicted for an offense specified in Section 243.4,
13 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
14 Department of Social Services shall notify the licensee to act
15 immediately to terminate the person's employment, remove the
16 person from the community care facility, or bar the person from
17 entering the community care facility. The State Department of
18 Social Services may subsequently grant an exemption from
19 disqualification pursuant to subdivision (g). If the conviction or
20 arrest was for another crime, except a minor traffic violation, the
21 licensee shall, upon notification by the State Department of Social
22 Services, act immediately to either (A) terminate the person's
23 employment, remove the person from the community care facility,
24 or bar the person from entering the community care facility; or
25 (B) seek an exemption from disqualification pursuant to subdivision
26 (g). The State Department of Social Services shall determine if
27 the person shall be allowed to remain in the facility until a decision
28 on the exemption from disqualification is rendered. A licensee's
29 failure to comply with the department's prohibition of employment,
30 contact with clients, or presence in the facility as required by this
31 paragraph shall result in a citation of deficiency and an immediate
32 assessment of civil penalties in the amount of one hundred dollars
33 (\$100) per violation per day and shall be grounds for disciplining
34 the licensee pursuant to Section 1550.

35 (4) The department may issue an exemption from
36 disqualification on its own motion pursuant to subdivision (g) if
37 the person's criminal history indicates that the person is of good
38 character based on the age, seriousness, and frequency of the
39 conviction or convictions. The department, in consultation with
40 interested parties, shall develop regulations to establish the criteria

1 to grant an exemption from disqualification pursuant to this
2 paragraph.

3 (5) Concurrently with notifying the licensee pursuant to
4 paragraph (3), the department shall notify the affected individual
5 of his or her right to seek an exemption from disqualification
6 pursuant to subdivision (g). The individual may seek an exemption
7 from disqualification only if the licensee terminates the person's
8 employment or removes the person from the facility after receiving
9 notice from the department pursuant to paragraph (3).

10 (d) (1) Before issuing a license or certificate of approval to any
11 person or persons to operate a foster family home or certified
12 family home as described in Section 1506, the State Department
13 of Social Services or other approving authority shall secure
14 California and Federal Bureau of Investigation criminal history
15 information to determine whether the applicant or any person
16 specified in subdivision (b) who is not exempt from fingerprinting
17 has ever been convicted of a crime other than a minor traffic
18 violation or arrested for any crime specified in subdivision (c) of
19 Section 290 of the Penal Code, for violating Section 245 or 273.5,
20 subdivision (b) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
21 paragraph (2) of Section ~~273a~~ 273a, of the Penal Code, or for any
22 crime for which the department cannot grant an exemption if the
23 person was convicted and the person has not been exonerated. The
24 State Department of Social Services or other approving authority
25 shall not issue a license or certificate of approval to any foster
26 family home or certified family home applicant who has not
27 obtained both a California and Federal Bureau of Investigation
28 criminal record clearance or exemption from disqualification
29 pursuant to subdivision (g).

30 (2) The criminal history information shall include the full
31 criminal record, if any, of those persons.

32 (3) Neither the Department of Justice nor the State Department
33 of Social Services may charge a fee for the fingerprinting of an
34 applicant for a license, special permit, or certificate of approval
35 described in this subdivision. The record, if any, shall be taken
36 into consideration when evaluating a prospective applicant.

37 (4) The following shall apply to the criminal record information:

38 (A) If the applicant or other persons specified in subdivision
39 (b) who are not exempt from fingerprinting have convictions that
40 would make the applicant's home unfit as a foster family home or

1 a certified family home, the license, special permit, or certificate
2 of approval shall be denied.

3 (B) If the State Department of Social Services finds that the
4 applicant, or any person specified in subdivision (b) who is not
5 exempt from fingerprinting is awaiting trial for a crime other than
6 a minor traffic violation, the State Department of Social Services
7 or other approving authority may cease processing the application
8 until the conclusion of the trial.

9 (C) For purposes of this subdivision, a criminal record clearance
10 provided under Section 8712 of the Family Code may be used by
11 the department or other approving agency.

12 (D) To the same extent required for federal funding, an applicant
13 for a foster family home license or for certification as a family
14 home, and any other person specified in subdivision (b) who is
15 not exempt from fingerprinting, shall submit a set of fingerprint
16 images and related information to the Department of Justice and
17 the Federal Bureau of Investigation, through the Department of
18 Justice, for a state and federal level criminal offender record
19 information search, in addition to the criminal records search
20 required by subdivision (a).

21 (5) Any person specified in this subdivision shall, as a part of
22 the application, be fingerprinted and sign a declaration under
23 penalty of perjury regarding any prior criminal convictions or
24 arrests for any crime against a child, spousal or cohabitant ~~abuse~~
25 ~~or, abuse, or~~ any crime for which the department cannot grant an
26 exemption if the person was convicted and shall submit these
27 fingerprints to the licensing agency or other approving authority.

28 (6) (A) Subsequent to initial licensure or certification, a person
29 specified in subdivision (b) who is not exempt from fingerprinting
30 shall obtain both a California and Federal Bureau of Investigation
31 criminal record clearance, or an exemption from disqualification
32 pursuant to subdivision (g), prior to employment, residence, or
33 initial presence in the foster family or certified family home. A
34 foster family home licensee or foster family agency shall submit
35 fingerprint images and related information of persons specified in
36 subdivision (b) who are not exempt from fingerprinting to the
37 Department of Justice and the Federal Bureau of Investigation,
38 through the Department of Justice, for a state and federal level
39 criminal offender record information search, or to comply with
40 paragraph (1) of subdivision (h). A foster family home licensee's

1 or a foster family agency's failure to either prohibit the
2 employment, residence, or initial presence of a person specified
3 in subdivision (b) who is not exempt from fingerprinting and who
4 has not received either a criminal record clearance or an exemption
5 from disqualification pursuant to subdivision (g), or comply with
6 paragraph (1) of subdivision (h), as required in this section, shall
7 result in a citation of a deficiency, and the immediate civil penalties
8 of one hundred dollars (\$100) per violation per day for a maximum
9 of five days, unless the violation is a second or subsequent violation
10 within a 12-month period in which case the civil penalties shall
11 be in the amount of one hundred dollars (\$100) per violation for
12 a maximum of 30 days, and shall be grounds for disciplining the
13 licensee pursuant to Section 1550. A violation of the regulation
14 adopted pursuant to Section 1522.04 shall result in the citation of
15 a deficiency and an immediate assessment of civil penalties in the
16 amount of one hundred dollars (\$100) per violation per day for a
17 maximum of five days, unless the violation is a second or
18 subsequent violation within a 12-month period in which case the
19 civil penalties shall be in the amount of one hundred dollars (\$100)
20 per violation for a maximum of 30 days, and shall be grounds for
21 disciplining the foster family home licensee or the foster family
22 agency pursuant to Section 1550. The State Department of Social
23 Services may assess penalties for continued violations, as permitted
24 by Section 1548. The fingerprint images shall then be submitted
25 to the Department of Justice for processing.

26 (B) Upon request of the licensee, who shall enclose a
27 self-addressed envelope for this purpose, the Department of Justice
28 shall verify receipt of the fingerprints. Within five working days
29 of the receipt of the criminal record or information regarding
30 criminal convictions from the Department of Justice, the
31 department shall notify the applicant of any criminal arrests or
32 convictions. If no arrests or convictions are recorded, the
33 Department of Justice shall provide the foster family home licensee
34 or the foster family agency with a statement of that fact concurrent
35 with providing the information to the State Department of Social
36 Services.

37 (7) If the State Department of Social Services finds that the
38 applicant, or any other person specified in subdivision (b) who is
39 not exempt from fingerprinting, has been convicted of a crime
40 other than a minor traffic violation, the application shall be denied,

1 unless the director grants an exemption from disqualification
2 pursuant to subdivision (g).

3 (8) If the State Department of Social Services finds after
4 licensure or the granting of the certificate of approval that the
5 licensee, certified foster parent, or any other person specified in
6 subdivision (b) who is not exempt from fingerprinting, has been
7 convicted of a crime other than a minor traffic violation, the license
8 or certificate of approval may be revoked by the department or the
9 foster family agency, whichever is applicable, unless the director
10 grants an exemption from disqualification pursuant to subdivision
11 (g). A licensee's failure to comply with the department's
12 prohibition of employment, contact with clients, or presence in
13 the facility as required by paragraph (3) of subdivision (c) shall
14 be grounds for disciplining the licensee pursuant to Section 1550.

15 (e) ~~(1) The State Department of Social Services shall not issue~~
16 ~~a criminal record clearance to a person with a record of an arrest~~
17 ~~prior to the department's completion of an investigation of that~~
18 ~~arrest record. The State Department of Social Services shall not~~
19 use a record of arrest to deny, revoke, or terminate any application,
20 license, employment, or residence unless the department
21 investigates the incident and secures evidence, whether or not
22 related to the incident of arrest, that is admissible in an
23 administrative hearing to establish conduct by the person that may
24 pose a risk to the health and safety of any person who is or may
25 become a client. ~~The~~

26 *(2) The department shall not issue a criminal record clearance*
27 *to a person who has been arrested, and that arrest is pending*
28 *investigation or conviction, for any crime specified in Section 290*
29 *of the Penal Code, for violating Section 245 or 273.5, subdivision*
30 *(b) of Section 273a, of the Penal Code, or, prior to January 1,*
31 *1994, paragraph (2) of Section 273a of the Penal Code, prior to*
32 *the department's completion of an investigation pursuant to*
33 *paragraph (1).*

34 (3) The State Department of Social Services is authorized to
35 obtain any arrest or conviction records or reports from any law
36 enforcement agency as necessary to the performance of its duties
37 to inspect, license, and investigate community care facilities and
38 individuals associated with a community care facility.

39 (f) (1) For purposes of this section or any other provision of
40 this chapter, a conviction means a plea or verdict of guilty or a

conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraph (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4), (7), and (8) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption shall not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,

1 paragraph (1) of Section 273a, Section 273d, 288, or 289,
2 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
3 Code, or was a conviction of another crime against an individual
4 specified in subdivision (c) of Section 667.5 of the Penal Code.

5 (ii) Notwithstanding clause (i), the director may grant an
6 exemption regarding the conviction for an offense described in
7 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
8 of the Penal Code, if the employee or prospective employee has
9 been rehabilitated as provided in Section 4852.03 of the Penal
10 Code, has maintained the conduct required in Section 4852.05 of
11 the Penal Code for at least 10 years, and has the recommendation
12 of the district attorney representing the employee's county of
13 residence, or if the employee or prospective employee has received
14 a certificate of rehabilitation pursuant to Chapter 3.5 (commencing
15 with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This
16 clause shall not apply to foster care providers, including relative
17 caregivers, nonrelated extended family members, or any other
18 person specified in subdivision (b), in those homes where the
19 individual has been convicted of an offense described in paragraph
20 (1) of subdivision (c) of Section 667.5 of the Penal Code.

21 (B) A felony offense specified in Section 729 of the Business
22 and Professions Code or Section 206 or 215, subdivision (a) of
23 Section 347, subdivision (b) of Section 417, or subdivision (a) of
24 Section 451 of the Penal Code.

25 (C) Under no circumstances shall an exemption be granted
26 pursuant to this subdivision to any foster care provider applicant
27 if that applicant, or any other person specified in subdivision (b)
28 in those homes, has a felony conviction for either of the following
29 offenses:

30 (i) A felony conviction for child abuse or neglect, spousal abuse,
31 crimes against a child, including child pornography, or for a crime
32 involving violence, including rape, sexual assault, or homicide,
33 but not including other physical assault and battery. For purposes
34 of this subparagraph, a crime involving violence means a violent
35 crime specified in clause (i) of subparagraph (A), or subparagraph
36 (B).

37 (ii) A felony conviction, within the last five years, for physical
38 assault, battery, or a drug- or alcohol-related offense.

39 (iii) This subparagraph shall not apply to licenses or approvals
40 wherein a caregiver was granted an exemption to a criminal

1 conviction described in clause (i) or (ii) prior to the enactment of
2 this subparagraph.

3 (iv) This subparagraph shall remain operative only to the extent
4 that compliance with its provisions is required by federal law as
5 a condition for receiving funding under Title IV-E of the federal
6 Social Security Act (42 U.S.C. Sec. 670 et seq.).

7 (2) The department shall not prohibit a person from being
8 employed or having contact with clients in a facility on the basis
9 of a denied criminal record exemption request or arrest information
10 unless the department complies with the requirements of Section
11 1558.

12 (h) (1) For purposes of compliance with this section, the
13 department may permit an individual to transfer a current criminal
14 record clearance, as defined in subdivision (a), from one facility
15 to another, as long as the criminal record clearance has been
16 processed through a state licensing district office, and is being
17 transferred to another facility licensed by a state licensing district
18 office. The request shall be in writing to the State Department of
19 Social Services, and shall include a copy of the person's driver's
20 license or valid identification card issued by the Department of
21 Motor Vehicles, or a valid photo identification issued by another
22 state or the United States government if the person is not a
23 California resident. Upon request of the licensee, who shall enclose
24 a self-addressed envelope for this purpose, the State Department
25 of Social Services shall verify whether the individual has a
26 clearance that can be transferred.

27 (2) The State Department of Social Services shall hold criminal
28 record clearances in its active files for a minimum of three years
29 after an employee is no longer employed at a licensed facility in
30 order for the criminal record clearance to be transferred.

31 (3) The following shall apply to a criminal record clearance or
32 exemption from the department or a county office with
33 department-delegated licensing authority:

34 (A) A county office with department-delegated licensing
35 authority may accept a clearance or exemption from the
36 department.

37 (B) The department may accept a clearance or exemption from
38 any county office with department-delegated licensing authority.

1 (C) A county office with department-delegated licensing
2 authority may accept a clearance or exemption from any other
3 county office with department-delegated licensing authority.

4 (4) With respect to notifications issued by the Department of
5 Justice pursuant to Section 11105.2 of the Penal Code concerning
6 an individual whose criminal record clearance was originally
7 processed by the department or a county office with
8 department-delegated licensing authority, all of the following shall
9 apply:

10 (A) The Department of Justice shall process a request from the
11 department or a county office with department-delegated licensing
12 authority to receive the notice only if all of the following conditions
13 are met:

14 (i) The request shall be submitted to the Department of Justice
15 by the agency to be substituted to receive the notification.

16 (ii) The request shall be for the same applicant type as the type
17 for which the original clearance was obtained.

18 (iii) The request shall contain all prescribed data elements and
19 format protocols pursuant to a written agreement between the
20 department and the Department of Justice.

21 (B) (i) On or before January 7, 2005, the department shall notify
22 the Department of Justice of all county offices that have
23 department-delegated licensing authority.

24 (ii) The department shall notify the Department of Justice within
25 15 calendar days of the date on which a new county office receives
26 department-delegated licensing authority or a county's delegated
27 licensing authority is rescinded.

28 (C) The Department of Justice shall charge the department, a
29 county office with department-delegated licensing authority, or a
30 county child welfare agency with criminal record clearance and
31 exemption authority, a fee for each time a request to substitute the
32 recipient agency is received for purposes of this paragraph. This
33 fee shall not exceed the cost of providing the service.

34 (5) (A) A county child welfare agency with authority to secure
35 clearances pursuant to Section 16504.5 of the Welfare and
36 Institutions Code and to grant exemptions pursuant to Section
37 361.4 of the Welfare and Institutions Code may accept a clearance
38 or exemption from another county with criminal record and
39 exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(l) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the electronic fingerprint images of those individuals whose contact with residents of residential care

1 facilities for persons with a chronic, life-threatening illness may
2 pose a risk to the residents' health and safety.

3 It is the intent of the Legislature, in enacting this section, to
4 require the electronic fingerprint images of those individuals whose
5 contact with community care clients may pose a risk to the clients'
6 health and safety. An individual shall be required to obtain either
7 a criminal record clearance or a criminal record exemption from
8 the State Department of Social Services before his or her initial
9 presence in a residential care facility for persons with *a* chronic,
10 life-threatening illness.

11 (a) (1) Before issuing a license to a person or persons to operate
12 or manage a residential care facility, the department shall secure
13 from an appropriate law enforcement agency a criminal record to
14 determine whether the applicant or any other person specified in
15 subdivision (b) has ever been convicted of a crime other than a
16 minor traffic violation or arrested for any crime specified in
17 subdivision (c) of Section 290 of the Penal Code, for violating
18 Section 245 or 273.5, subdivision (b) of Section ~~273a~~ 273a, or,
19 prior to January 1, 1994, paragraph (2) of Section ~~273a~~ 273a, of
20 the Penal Code, or for any crime for which the department cannot
21 grant an exemption if the person was convicted and the person has
22 not been exonerated.

23 (2) The criminal history information shall include the full
24 criminal ~~record~~ *record*, if any, of those persons, and subsequent
25 arrest information pursuant to Section 11105.2 of the Penal Code.

26 (3) The following shall apply to the criminal record information:

27 (A) If the State Department of Social Services finds that the
28 applicant or another person specified in subdivision ~~(b)~~ (b), has
29 been convicted of a crime, other than a minor traffic violation, the
30 application shall be denied, unless the director grants an exemption
31 pursuant to subdivision (f).

32 (B) If the State Department of Social Services finds that the
33 applicant, or another person specified in subdivision (b) is awaiting
34 trial for a crime other than a minor traffic violation, the State
35 Department of Social Services may cease processing the application
36 until the conclusion of the trial.

37 (C) If no criminal record information has been recorded, the
38 Department of Justice shall provide the applicant and the State
39 Department of Social Services with a statement of that fact.

1 (D) If the State Department of Social Services finds after
2 licensure that the licensee, or any other person specified in
3 paragraph (2) of subdivision (b), has been convicted of a crime
4 other than a minor traffic violation, the license may be revoked,
5 unless the director grants an exemption pursuant to subdivision
6 (f).

7 (E) An applicant and any other person specified in subdivision
8 (b) shall submit fingerprint images and related information to the
9 Department of Justice and the Federal Bureau of Investigation,
10 through the Department of Justice, for a state and federal level
11 criminal offender record information search, in addition to the
12 search required by this subdivision. If an applicant meets all other
13 conditions for licensure, except receipt of the Federal Bureau of
14 Investigation's criminal history information for the applicant and
15 persons listed in subdivision (b), the department may issue a license
16 if the applicant and each person described by subdivision (b) has
17 signed and submitted a statement that he or she has never been
18 convicted of a crime in the United States, other than a traffic
19 infraction as defined in paragraph (1) of subdivision (a) of Section
20 42001 of the Vehicle Code. If, after licensure, the department
21 determines that the licensee or person specified in subdivision (b)
22 has a criminal record, the license may be revoked pursuant to
23 subdivision (a) of Section 1568.082. The department may also
24 suspend the license pending an administrative hearing pursuant to
25 subdivision (b) of Section 1568.082.

26 (b) In addition to the applicant, this section shall be applicable
27 to criminal convictions of the following persons:

28 (1) Adults responsible for administration or direct supervision
29 of staff of the facility.

30 (2) A person, other than a resident, residing in the facility.

31 (3) A person who provides resident assistance in dressing,
32 grooming, bathing, or personal hygiene. A nurse assistant or home
33 health aide meeting the requirements of Section 1338.5 or 1736.6,
34 respectively, who is not employed, retained, or contracted by the
35 licensee, and who has been certified or recertified on or after July
36 1, 1998, shall be deemed to meet the criminal record clearance
37 requirements of this section. A certified nurse assistant and certified
38 home health aide who will be providing client assistance and who
39 falls under this exemption shall provide one copy of his or her
40 current certification, prior to providing care, to the residential care

1 facility for persons with *a* chronic, life-threatening illness. The
2 facility shall maintain the copy of the certification on file as long
3 as care is being provided by the certified nurse assistant or certified
4 home health aide at the facility. This paragraph does not restrict
5 the right of the department to exclude a certified nurse assistant
6 or certified home health aide from a licensed residential care
7 facility for persons with *a* chronic, life-threatening illness pursuant
8 to Section 1568.092.

9 (4) (A) A staff person, volunteer, or employee who has contact
10 with the residents.

11 (B) A volunteer shall be exempt from the requirements of this
12 subdivision if he or she is a relative, significant other, or close
13 friend of a client receiving care in the facility and the volunteer
14 does not provide direct care and supervision of residents. A
15 volunteer who provides direct care and supervision shall be exempt
16 if the volunteer is a resident's spouse, significant other, close
17 friend, or family member and provides direct care and supervision
18 to that resident only at the request of the resident. The department
19 may define in regulations persons similar to those described in this
20 subparagraph who may be exempt from the requirements of this
21 subdivision.

22 (5) If the applicant is a firm, partnership, association, or
23 corporation, the chief executive officer or other person serving in
24 that capacity.

25 (6) Additional officers of the governing body of the applicant,
26 or other persons with a financial interest in the applicant, as
27 determined necessary by the department by regulation. The criteria
28 used in the development of these regulations shall be based on the
29 person's capability to exercise substantial influence over the
30 operation of the facility.

31 (c) (1) (A) Subsequent to initial licensure, a person specified
32 in subdivision (b) and not exempted from fingerprinting shall, as
33 a condition to employment, residence, or presence in a residential
34 care facility, be fingerprinted and sign a declaration under penalty
35 of perjury regarding any prior criminal convictions. The licensee
36 shall submit fingerprint images and related information to the
37 Department of Justice and the Federal Bureau of Investigation,
38 through the Department of Justice, for a state and federal level
39 criminal offender record information search, or to comply with

1 paragraph (1) of subdivision (g), prior to the person's employment,
2 residence, or initial presence in the residential care facility.

3 (B) These fingerprint images and related information shall be
4 electronically submitted to the Department of Justice in a manner
5 approved by the State Department of Social Services and the
6 Department of Justice, for the purpose of obtaining a permanent
7 set of fingerprints. A licensee's failure to submit fingerprint images
8 and related information to the Department of Justice, or to comply
9 with paragraph (1) of subdivision (g), as required in this section,
10 shall result in the citation of a deficiency and an immediate
11 assessment of civil penalties in the amount of one hundred dollars
12 (\$100) per violation per day for a maximum of five days, unless
13 the violation is a second or subsequent violation within a 12-month
14 period in which case the civil penalties shall be in the amount of
15 one hundred dollars (\$100) per violation for a maximum of 30
16 days, and shall be grounds for disciplining the licensee pursuant
17 to Section 1568.082. The State Department of Social Services may
18 assess civil penalties for continued violations as allowed in Section
19 1568.0822. The fingerprint images and related information shall
20 then be submitted to the Department of Justice for processing. The
21 licensee shall maintain and make available for inspection
22 documentation of the individual's clearance or exemption.

23 (2) A violation of the regulations adopted pursuant to Section
24 1522.04 shall result in the citation of a deficiency and an immediate
25 assessment of civil penalties in the amount of one hundred dollars
26 (\$100) per violation per day for a maximum of five days, unless
27 the violation is a second or subsequent violation within a 12-month
28 period in which case the civil penalties shall be in the amount of
29 one hundred dollars (\$100) per violation for a maximum of 30
30 days, and shall be grounds for disciplining the licensee pursuant
31 to Section 1568.082. The department may assess civil penalties
32 for continued violations as permitted by Section 1568.0822.

33 (3) Within 14 calendar days of the receipt of the fingerprint
34 images, the Department of Justice shall notify the State Department
35 of Social Services of the criminal record information, as provided
36 for in this subdivision. If no criminal record information has been
37 recorded, the Department of Justice shall provide the licensee and
38 the State Department of Social Services with a statement of that
39 fact within 14 calendar days of receipt of the fingerprint images.
40 If new fingerprint images are required for processing, the

1 Department of Justice shall, within 14 calendar days from the date
2 of receipt of the fingerprint images, notify the licensee that the
3 fingerprint images were illegible. The Department of Justice shall
4 notify the department, as required by Section 1522.04, and shall
5 notify the licensee by mail within 14 days of electronic
6 transmission of the fingerprint images to the Department of Justice,
7 if the person has no criminal history record.

8 (4) Except for persons specified in paragraph (2) of subdivision
9 (b), the licensee shall endeavor to ascertain the previous
10 employment history of persons required to be fingerprinted under
11 this subdivision. If it is determined by the State Department of
12 Social Services, on the basis of the fingerprint images submitted
13 to the Department of Justice, that the person has been convicted
14 of a sex offense against a minor, an offense specified in Section
15 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
16 the department shall notify the licensee to act immediately to
17 terminate the person's employment, remove the person from the
18 residential care facility, or bar the person from entering the
19 residential care facility. The department may subsequently grant
20 an exemption pursuant to subdivision (f). If the conviction was for
21 another crime, except a minor traffic violation, the licensee shall,
22 upon notification by the department, act immediately to either (A)
23 terminate the person's employment, remove the person from the
24 residential care facility, or bar the person from entering the
25 residential care facility; or (B) seek an exemption pursuant to
26 subdivision (f). The department shall determine if the person shall
27 be allowed to remain in the facility until a decision on the
28 exemption is rendered. A licensee's failure to comply with the
29 department's prohibition of employment, contact with clients, or
30 presence in the facility as required by this paragraph shall result
31 in a citation of deficiency and an immediate assessment of civil
32 penalties by the department against the licensee, in the amount of
33 one hundred dollars (\$100) per violation per day for a maximum
34 of five days, unless the violation is a second or subsequent violation
35 within a 12-month period in which case the civil penalties shall
36 be in the amount of one hundred dollars (\$100) per violation for
37 a maximum of 30 days, and shall be grounds for disciplining the
38 licensee pursuant to Section 1568.082.

39 (5) The department may issue an exemption on its own motion
40 pursuant to subdivision (f) if the person's criminal history indicates

1 that the person is of good character based on the age, seriousness,
2 and frequency of the conviction or convictions. The department,
3 in consultation with interested parties, shall develop regulations
4 to establish the criteria to grant an exemption pursuant to this
5 paragraph.

6 (6) Concurrently with notifying the licensee pursuant to
7 paragraph (4), the department shall notify the affected individual
8 of his or her right to seek an exemption pursuant to subdivision
9 (f). The individual may seek an exemption only if the licensee
10 terminates the person's employment or removes the person from
11 the facility after receiving notice from the department pursuant to
12 paragraph (4).

13 (d) (1) For purposes of this section or any other provision of
14 this chapter, a conviction means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. An action that the
16 department is permitted to take following the establishment of a
17 conviction may be taken when the time for appeal has elapsed,
18 when the judgment of conviction has been affirmed on appeal, or
19 when an order granting probation is made suspending the
20 imposition of the sentence, notwithstanding a subsequent order
21 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
22 permitting that person to withdraw his or her plea of guilty and to
23 enter a plea of not guilty, setting aside the verdict of guilty, or
24 dismissing the accusation, information, or indictment. For purposes
25 of this chapter, the record of a conviction, or a copy thereof
26 certified by the clerk of the court or by a judge of the court in
27 which the conviction occurred, shall be conclusive evidence of the
28 conviction. For purposes of this section or any other provision of
29 this chapter, the arrest disposition report certified by the
30 Department of Justice, or documents admissible in a criminal action
31 pursuant to Section 969b of the Penal Code, shall be prima facie
32 evidence of the conviction, notwithstanding any other provision
33 of law prohibiting the admission of these documents in a civil or
34 administrative action.

35 (2) For purposes of this section or any other provision of this
36 chapter, the department shall consider criminal convictions from
37 another state or federal court as if the criminal offense was
38 committed in this state.

39 (e) (1) The State Department of Social Services shall not ~~issue~~
40 ~~a criminal record clearance to a person with a record of an arrest~~

1 prior to the department's completion of an investigation of that
2 arrest record. The State Department of Social Services shall not
3 use a record of arrest to deny, revoke, or terminate any application,
4 license, employment, or residence unless the department
5 investigates the incident and secures evidence, whether or not
6 related to the incident of arrest, that is admissible in an
7 administrative hearing to establish conduct by the person that may
8 pose a risk to the health and safety of any person who is or may
9 become a client. The

10 (2) *The department shall not issue a criminal record clearance*
11 *to a person who has been arrested, and that arrest is pending*
12 *investigation or conviction, for any crime specified in Section 290*
13 *of the Penal Code, for violating Section 245 or 273.5, subdivision*
14 *(b) of Section 273a, of the Penal Code, or, prior to January 1,*
15 *1994, paragraph (2) of Section 273a of the Penal Code, prior to*
16 *the department's completion of an investigation pursuant to*
17 *paragraph (1).*

18 (3) The State Department of Social Services is authorized to
19 obtain arrest or conviction records or reports from a law
20 enforcement agency as necessary to the performance of its duties
21 to inspect, license, and investigate community care facilities and
22 individuals associated with a community care facility.

23 (f) (1) After review of the record, the director may grant an
24 exemption from disqualification for a license as specified in
25 paragraphs (1) and (4) of subdivision (a), or for employment,
26 residence, or presence in a residential care facility as specified in
27 paragraphs (4), (5), and (6) of subdivision (c) if the director has
28 substantial and convincing evidence to support a reasonable belief
29 that the applicant and the person convicted of the crime, if other
30 than the applicant, are of such good character as to justify issuance
31 of the license or special permit or granting an exemption for
32 purposes of subdivision (c). However, an exemption shall not be
33 granted pursuant to this subdivision if the conviction was for any
34 of the following offenses:

35 (A) An offense specified in Section 220, 243.4, or 264.1,
36 subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
37 paragraph (1) of Section 273a, Section 273d, 288, or 289,
38 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
39 Code, or was a conviction of another crime against an individual
40 specified in subdivision (c) of Section 667.5 of the Penal Code.

1 (B) A felony offense specified in Section 729 of the Business
2 and Professions Code or Section 206 or 215, subdivision (a) of
3 Section 347, subdivision (b) of Section 417, or subdivision (a) of
4 Section 451 of the Penal Code.

5 (2) The department shall not prohibit a person from being
6 employed or having contact with clients in a facility on the basis
7 of a denied criminal record exemption request or arrest information
8 unless the department complies with Section 1568.092.

9 (g) (1) For purposes of compliance with this section, the
10 department may permit an individual to transfer a current criminal
11 record clearance, as defined in subdivision (a), from one facility
12 to another, as long as the criminal record clearance has been
13 processed through a state licensing district office, and is being
14 transferred to another facility licensed by a state licensing district
15 office. The request shall be in writing to the department, and shall
16 include a copy of the person's driver's license or valid
17 identification card issued by the Department of Motor Vehicles,
18 or a valid photo identification issued by another state or the United
19 States government if the person is not a California resident. Upon
20 request of the licensee, who shall enclose a self-addressed stamped
21 envelope for this purpose, the department shall verify whether the
22 individual has a clearance that can be transferred.

23 (2) The State Department of Social Services shall hold criminal
24 record clearances in its active files for a minimum of two years
25 after an employee is no longer employed at a licensed facility in
26 order for the criminal record clearance to be transferred.

27 (h) If a licensee or facility is required by law to deny
28 employment or to terminate employment of any employee based
29 on written notification from the state department that the employee
30 has a prior criminal conviction or is determined unsuitable for
31 employment under Section 1568.092, the licensee or facility shall
32 not incur civil liability or unemployment insurance liability as a
33 result of that denial or termination.

34 (i) (1) The Department of Justice shall charge a fee sufficient
35 to cover its cost in providing services to comply with the 14-day
36 requirement contained in subdivision (c) for provision to the
37 department of criminal record information.

38 (2) Paragraph (1) shall cease to be implemented when the
39 department adopts emergency regulations pursuant to Section

1 1522.04, and shall become inoperative when permanent regulations
2 are adopted under that section.

3 (j) Notwithstanding any other ~~provision of law~~, the department
4 may provide an individual with a copy of his or her state or federal
5 level criminal offender record information search response as
6 provided to that department by the Department of Justice if the
7 department has denied a criminal background clearance based on
8 this information and the individual makes a written request to the
9 department for a copy specifying an address to which it is to be
10 sent. The state or federal level criminal offender record information
11 search response shall not be modified or altered from its form or
12 content as provided by the Department of Justice and shall be
13 provided to the address specified by the individual in his or her
14 written request. The department shall retain a copy of the
15 individual's written request and the response and date provided.

16 SEC. 3. Section 1569.17 of the Health and Safety Code is
17 amended to read:

18 1569.17. The Legislature recognizes the need to generate timely
19 and accurate positive fingerprint identification of applicants as a
20 condition of issuing licenses, permits, or certificates of approval
21 for persons to operate or provide direct care services in a residential
22 care facility for the elderly. It is the intent of the Legislature in
23 enacting this section to require the fingerprints of those individuals
24 whose contact with clients of residential care facilities for the
25 elderly may pose a risk to the clients' health and safety. An
26 individual shall be required to obtain either a criminal record
27 clearance or a criminal record exemption from the State Department
28 of Social Services before his or her initial presence in a residential
29 care facility for the elderly.

30 (a) (1) Before issuing a license to any person or persons to
31 operate or manage a residential care facility for the elderly, the
32 department shall secure from an appropriate law enforcement
33 agency a criminal record to determine whether the applicant or
34 any other person specified in subdivision (b) has ever been
35 convicted of a crime other than a minor traffic violation or arrested
36 for any crime specified in subdivision (c) of Section 290 of the
37 Penal Code, for violating Section 245 or 273.5, subdivision (b) of
38 Section ~~273a~~ 273a, or, prior to January 1, 1994, paragraph (2) of
39 Section ~~273a~~ 273a, of the Penal Code, or for any crime for which

1 the department cannot grant an exemption if the person was
2 convicted and the person has not been exonerated.

3 (2) The criminal history information shall include the full
4 criminal record, if any, of those persons, and subsequent arrest
5 information pursuant to Section 11105.2 of the Penal Code.

6 (3) The following shall apply to the criminal record information:

7 (A) If the State Department of Social Services finds that the
8 applicant or any other person specified in subdivision (b) has been
9 convicted of a crime, other than a minor traffic violation, the
10 application shall be denied, unless the director grants an exemption
11 pursuant to subdivision (f).

12 (B) If the State Department of Social Services finds that the
13 applicant, or any other person specified in subdivision ~~(b)~~ (b), is
14 awaiting trial for a crime other than a minor traffic violation, the
15 State Department of Social Services may cease processing the
16 application until the conclusion of the trial.

17 (C) If no criminal record information has been recorded, the
18 Department of Justice shall provide the applicant and the State
19 Department of Social Services with a statement of that fact.

20 (D) If the State Department of Social Services finds after
21 licensure that the licensee, or any other person specified in
22 paragraph (2) of subdivision (b), has been convicted of a crime
23 other than a minor traffic violation, the license may be revoked,
24 unless the director grants an exemption pursuant to subdivision
25 (f).

26 (E) An applicant and any other person specified in subdivision
27 (b) shall submit fingerprint images and related information to the
28 Department of Justice and the Federal Bureau of Investigation,
29 through the Department of Justice, for a state and federal level
30 criminal offender record information search, in addition to the
31 search required by subdivision (a). If an applicant meets all other
32 conditions for licensure, except receipt of the Federal Bureau of
33 Investigation's criminal history information for the applicant and
34 persons listed in subdivision (b), the department may issue a license
35 if the applicant and each person described by subdivision (b) has
36 signed and submitted a statement that he or she has never been
37 convicted of a crime in the United States, other than a traffic
38 infraction as defined in paragraph (1) of subdivision (a) of Section
39 42001 of the Vehicle Code. If, after licensure, the department
40 determines that the licensee or person specified in subdivision (b)

1 has a criminal record, the license may be revoked pursuant to
2 Section 1569.50. The department may also suspend the license
3 pending an administrative hearing pursuant to Sections 1569.50
4 and 1569.51.

5 (b) In addition to the applicant, the provisions of this section
6 shall apply to criminal convictions of the following persons:

7 (1) (A) Adults responsible for administration or direct
8 supervision of staff.

9 (B) Any person, other than a client, residing in the facility.
10 Residents of unlicensed independent senior housing facilities that
11 are located in contiguous buildings on the same property as a
12 residential care facility for the elderly shall be exempt from these
13 requirements.

14 (C) Any person who provides client assistance in dressing,
15 grooming, bathing, or personal hygiene. Any nurse assistant or
16 home health aide meeting the requirements of Section 1338.5 or
17 1736.6, respectively, who is not employed, retained, or contracted
18 by the licensee, and who has been certified or recertified on or
19 after July 1, 1998, shall be deemed to meet the criminal record
20 clearance requirements of this section. A certified nurse assistant
21 and certified home health aide who will be providing client
22 assistance and who falls under this exemption shall provide one
23 copy of his or her current certification, prior to providing care, to
24 the residential care facility for the elderly. The facility shall
25 maintain the copy of the certification on file as long as the care is
26 being provided by the certified nurse assistant or certified home
27 health aide at the facility. Nothing in this paragraph restricts the
28 right of the department to exclude a certified nurse assistant or
29 certified home health aide from a licensed residential care facility
30 for the elderly pursuant to Section 1569.58.

31 (D) Any staff person, volunteer, or employee who has contact
32 with the clients.

33 (E) If the applicant is a firm, partnership, association, or
34 corporation, the chief executive officer or other person serving in
35 a similar capacity.

36 (F) Additional officers of the governing body of the applicant
37 or other persons with a financial interest in the applicant, as
38 determined necessary by the department by regulation. The criteria
39 used in the development of these regulations shall be based on the

1 person's capability to exercise substantial influence over the
2 operation of the facility.

3 (2) The following persons are exempt from requirements
4 applicable under paragraph (1):

5 (A) A spouse, relative, significant other, or close friend of a
6 client shall be exempt if this person is visiting the client or provides
7 direct care and supervision to that client only.

8 (B) A volunteer to whom all of the following apply:

9 (i) The volunteer is at the facility during normal waking hours.

10 (ii) The volunteer is directly supervised by the licensee or a
11 facility employee with a criminal record clearance or exemption.

12 (iii) The volunteer spends no more than 16 hours per week at
13 the facility.

14 (iv) The volunteer does not provide clients with assistance in
15 dressing, grooming, bathing, or personal hygiene.

16 (v) The volunteer is not left alone with clients in care.

17 (C) A third-party contractor retained by the facility if the
18 contractor is not left alone with clients in care.

19 (D) A third-party contractor or other business professional
20 retained by a client and at the facility at the request or by
21 permission of that client. These individuals ~~may~~ *shall* not be left
22 alone with other clients.

23 (E) Licensed or certified medical professionals are exempt from
24 fingerprint and criminal background check requirements imposed
25 by community care licensing. This exemption does not apply to a
26 person who is a community care facility licensee or an employee
27 of the facility.

28 (F) Employees of licensed home health agencies and members
29 of licensed hospice interdisciplinary teams who have contact with
30 a resident of a residential care facility at the request of the resident
31 or resident's legal decisionmaker are exempt from fingerprint and
32 criminal background check requirements imposed by community
33 care licensing. This exemption does not apply to a person who is
34 a community care facility licensee or an employee of the facility.

35 (G) Clergy and other spiritual caregivers who are performing
36 services in common areas of the residential care facility, or who
37 are advising an individual resident at the request of, or with
38 permission of, the resident, are exempt from fingerprint and
39 criminal background check requirements imposed by community

1 care licensing. This exemption does not apply to a person who is
2 a community care facility licensee or an employee of the facility.

3 (H) Any person similar to those described in this subdivision,
4 as defined by the department in regulations.

5 (I) Nothing in this paragraph shall prevent a licensee from
6 requiring a criminal record clearance of any individual exempt
7 from the requirements of this section, provided that the individual
8 has client contact.

9 (c) (1) (A) Subsequent to initial licensure, any person required
10 to be fingerprinted pursuant to subdivision (b) shall, as a condition
11 to employment, residence, or presence in a residential facility for
12 the elderly, be fingerprinted and sign a declaration under penalty
13 of perjury regarding any prior criminal convictions. The licensee
14 shall submit these fingerprint images and related information to
15 the Department of Justice and the Federal Bureau of Investigation,
16 through the Department of Justice, for a state and federal level
17 criminal offender record information search, or to comply with
18 paragraph (1) of subdivision (g) prior to the person's employment,
19 residence, or initial presence in the residential care facility for the
20 elderly.

21 (B) These fingerprint images and related information shall be
22 electronically transmitted in a manner approved by the State
23 Department of Social Services and the Department of Justice. A
24 licensee's failure to submit fingerprint images and related
25 information to the Department of Justice, or to comply with
26 paragraph (1) of subdivision (g), as required in this section, shall
27 result in the citation of a deficiency and an immediate assessment
28 of civil penalties in the amount of one hundred dollars (\$100) per
29 violation per day for a maximum of five days, unless the violation
30 is a second or subsequent violation within a 12-month period in
31 which case the civil penalties shall be in the amount of one hundred
32 dollars (\$100) per violation for a maximum of 30 days, and shall
33 be grounds for disciplining the licensee pursuant to Section
34 1569.50. The State Department of Social Services may assess civil
35 penalties for continued violations as permitted by Section 1569.49.
36 The licensee shall then submit these fingerprint images to the State
37 Department of Social Services for processing. Documentation of
38 the individual's clearance or exemption shall be maintained by the
39 licensee and be available for inspection. The Department of Justice
40 shall notify the department, as required by Section 1522.04, and

1 notify the licensee by mail within 14 days of electronic
2 transmission of the fingerprints to the Department of Justice, if
3 the person has no criminal record. A violation of the regulations
4 adopted pursuant to Section 1522.04 shall result in the citation of
5 a deficiency and an immediate assessment of civil penalties in the
6 amount of one hundred dollars (\$100) per violation per day for a
7 maximum of five days, unless the violation is a second or
8 subsequent violation within a 12-month period in which case the
9 civil penalties shall be in the amount of one hundred dollars (\$100)
10 per violation for a maximum of 30 days, and shall be grounds for
11 disciplining the licensee pursuant to Section 1569.50. The
12 department may assess civil penalties for continued violations as
13 permitted by Section 1569.49.

14 (2) Within 14 calendar days of the receipt of the fingerprint
15 images, the Department of Justice shall notify the State Department
16 of Social Services of the criminal record information, as provided
17 for in this subdivision. If no criminal record information has been
18 recorded, the Department of Justice shall provide the licensee and
19 the State Department of Social Services with a statement of that
20 fact within 14 calendar days of receipt of the fingerprint images.
21 If new fingerprint images are required for processing, the
22 Department of Justice shall, within 14 calendar days from the date
23 of receipt of the fingerprint images, notify the licensee that the
24 fingerprint images were illegible.

25 (3) Except for persons specified in paragraph (2) of subdivision
26 (b), the licensee shall endeavor to ascertain the previous
27 employment history of persons required to be fingerprinted under
28 this subdivision. If the State Department of Social Services
29 determines, on the basis of the fingerprint images submitted to the
30 Department of Justice, that the person has been convicted of a sex
31 offense against a minor, an offense specified in Section 243.4,
32 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
33 Department of Social Services shall notify the licensee in writing
34 within 15 calendar days of the receipt of the notification from the
35 Department of Justice to act immediately to terminate the person's
36 employment, remove the person from the residential care facility
37 for the elderly, or bar the person from entering the residential care
38 facility for the elderly. The State Department of Social Services
39 may subsequently grant an exemption pursuant to subdivision (f).
40 If the conviction was for another crime, except a minor traffic

1 violation, the licensee shall, upon notification by the State
2 Department of Social Services, act immediately to either (1)
3 terminate the person's employment, remove the person from the
4 residential care facility for the elderly, or bar the person from
5 entering the residential care facility for the elderly or (2) seek an
6 exemption pursuant to subdivision (f). The department shall
7 determine if the person shall be allowed to remain in the facility
8 until a decision on the exemption is rendered by the department.
9 A licensee's failure to comply with the department's prohibition
10 of employment, contact with clients, or presence in the facility as
11 required by this paragraph shall result in a citation of deficiency
12 and an immediate assessment of civil penalties by the department
13 against the licensee, in the amount of one hundred dollars (\$100)
14 per violation per day for a maximum of five days, unless the
15 violation is a second or subsequent violation within a 12-month
16 period in which case the civil penalties shall be in the amount of
17 one hundred dollars (\$100) per violation for a maximum of 30
18 days, and shall be grounds for disciplining the licensee pursuant
19 to Section 1569.50.

20 (4) The department may issue an exemption on its own motion
21 pursuant to subdivision (f) if the person's criminal history indicates
22 that the person is of good character based on the age, seriousness,
23 and frequency of the conviction or convictions. The department,
24 in consultation with interested parties, shall develop regulations
25 to establish the criteria to grant an exemption pursuant to this
26 paragraph.

27 (5) Concurrently with notifying the licensee pursuant to
28 paragraph (4), the department shall notify the affected individual
29 of his or her right to seek an exemption pursuant to subdivision
30 (f). The individual may seek an exemption only if the licensee
31 terminates the person's employment or removes the person from
32 the facility after receiving notice from the department pursuant to
33 paragraph (4).

34 (d) (1) For purposes of this section or any other provision of
35 this chapter, a conviction means a plea or verdict of guilty or a
36 conviction following a plea of nolo contendere. Any action that
37 the department is permitted to take following the establishment of
38 a conviction may be taken when the time for appeal has elapsed,
39 when the judgment of conviction has been affirmed on appeal or
40 when an order granting probation is made suspending the

1 imposition of the sentence, notwithstanding a subsequent order
 2 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
 3 Penal Code permitting a person to withdraw his or her plea of
 4 guilty and to enter a plea of not guilty, or setting aside the verdict
 5 of guilty, or dismissing the accusation, information, or indictment.
 6 For purposes of this section or any other provision of this chapter,
 7 the record of a conviction, or a copy thereof certified by the clerk
 8 of the court or by a judge of the court in which the conviction
 9 occurred, shall be conclusive evidence of the conviction. For
 10 purposes of this section or any other provision of this chapter, the
 11 arrest disposition report certified by the Department of Justice or
 12 documents admissible in a criminal action pursuant to Section
 13 969b of the Penal Code shall be prima facie evidence of the
 14 conviction, notwithstanding any other provision of law prohibiting
 15 the admission of these documents in a civil or administrative action.

16 (2) For purposes of this section or any other provision of this
 17 chapter, the department shall consider criminal convictions from
 18 another state or federal court as if the criminal offense was
 19 committed in this state.

20 (e) (1) The State Department of Social Services shall not issue
 21 ~~a criminal record clearance to a person with a record of an arrest~~
 22 ~~prior to the department's completion of an investigation of that~~
 23 ~~arrest record. The State Department of Social Services may not~~
 24 ~~use a record of arrest to deny, revoke, or terminate any application,~~
 25 ~~license, employment, or residence unless the department~~
 26 ~~investigates the incident and secures evidence, whether or not~~
 27 ~~related to the incident of arrest, that is admissible in an~~
 28 ~~administrative hearing to establish conduct by the person that may~~
 29 ~~pose a risk to the health and safety of any person who is or may~~
 30 ~~become a client. The~~

31 (2) *The department shall not issue a criminal record clearance*
 32 *to a person who has been arrested, and that arrest is pending*
 33 *investigation or conviction, for any crime specified in Section 290*
 34 *of the Penal Code, for violating Section 245 or 273.5, subdivision*
 35 *(b) of Section 273a, of the Penal Code, or, prior to January 1,*
 36 *1994, paragraph (2) of Section 273a, of the Penal Code prior to*
 37 *the department's completion of an investigation pursuant to*
 38 *paragraph (1).*

39 (3) The State Department of Social Services is authorized to
 40 obtain any arrest or conviction records or reports from any law

1 enforcement agency as necessary to the performance of its duties
2 to inspect, license, and investigate community care facilities and
3 individuals associated with a community care facility.

4 (f) (1) After review of the record, the director may grant an
5 exemption from disqualification for a license as specified in
6 paragraphs (1) and (4) of subdivision (a), or for employment,
7 residence, or presence in a residential care facility for the elderly
8 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
9 director has substantial and convincing evidence to support a
10 reasonable belief that the applicant and the person convicted of
11 the crime, if other than the applicant, are of such good character
12 as to justify issuance of the license or special permit or granting
13 an exemption for purposes of subdivision (c). However, an
14 exemption ~~may~~ *shall* not be granted pursuant to this subdivision
15 if the conviction was for any of the following offenses:

16 (A) An offense specified in Section 220, 243.4, or 264.1,
17 subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
18 paragraph (1) of Section 273a, Section 273d, 288, or 289,
19 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
20 Code, or was a conviction of another crime against an individual
21 specified in subdivision (c) of Section 667.5 of the Penal Code.

22 (B) A felony offense specified in Section 729 of the Business
23 and Professions Code or Section 206 or 215, subdivision (a) of
24 Section 347, subdivision (b) of Section 417, or subdivision (a) of
25 Section 451 of the Penal Code.

26 (2) The director shall notify in writing the licensee or the
27 applicant of his or her decision within 60 days of receipt of all
28 information from the applicant and other sources determined
29 necessary by the director for the rendering of a decision pursuant
30 to this subdivision.

31 (3) The department ~~may~~ *shall* not prohibit a person from being
32 employed or having contact with clients in a facility on the basis
33 of a denied criminal record exemption request or arrest information
34 unless the department complies with the requirements of Section
35 1569.58.

36 (g) (1) For purposes of compliance with this section, the
37 department may permit an individual to transfer a current criminal
38 record clearance, as defined in subdivision (a), from one facility
39 to another, as long as the criminal record clearance has been
40 processed through a state licensing district office, and is being

1 transferred to another facility licensed by a state licensing district
2 office. The request shall be submitted in writing to the department,
3 and shall include a copy of the person's driver's license or valid
4 identification card issued by the Department of Motor Vehicles,
5 or a valid photo identification issued by another state or the United
6 States government if the person is not a California resident. Upon
7 request of the licensee, who shall enclose a self-addressed stamped
8 envelope for this purpose, the department shall verify whether the
9 individual has a clearance that can be transferred.

10 (2) The State Department of Social Services shall hold criminal
11 record clearances in its active files for a minimum of two years
12 after an employee is no longer employed at a licensed facility in
13 order for the criminal record clearances to be transferred under
14 this section.

15 (h) If a licensee or facility is required by law to deny
16 employment or to terminate employment of any employee based
17 on written notification from the department that the employee has
18 a prior criminal conviction or is determined unsuitable for
19 employment under Section 1569.58, the licensee or facility shall
20 not incur civil liability or unemployment insurance liability as a
21 result of that denial or termination.

22 (i) Notwithstanding any other ~~provision of~~ law, the department
23 may provide an individual with a copy of his or her state or federal
24 level criminal offender record information search response as
25 provided to that department by the Department of Justice if the
26 department has denied a criminal background clearance based on
27 this information and the individual makes a written request to the
28 department for a copy specifying an address to which it is to be
29 sent. The state or federal level criminal offender record information
30 search response shall not be modified or altered from its form or
31 content as provided by the Department of Justice and shall be
32 provided to the address specified by the individual in his or her
33 written request. The department shall retain a copy of the
34 individual's written request and the response and date provided.

35 SEC. 4. Section 1596.871 of the Health and Safety Code is
36 amended to read:

37 1596.871. The Legislature recognizes the need to generate
38 timely and accurate positive fingerprint identification of applicants
39 as a condition of issuing licenses, permits, or certificates of
40 approval for persons to operate or provide direct care services in

1 a child care center or family child care home. It is the intent of the
2 Legislature in enacting this section to require the fingerprints of
3 those individuals whose contact with child day care facility clients
4 may pose a risk to the children's health and safety. An individual
5 shall be required to obtain either a criminal record clearance or a
6 criminal record exemption from the State Department of Social
7 Services before his or her initial presence in a child day care
8 facility.

9 (a) (1) Before issuing a license or special permit to any person
10 to operate or manage a day care facility, the department shall secure
11 from an appropriate law enforcement agency a criminal record to
12 determine whether the applicant or any other person specified in
13 subdivision (b) has ever been convicted of a crime other than a
14 minor traffic violation or arrested for any crime specified in
15 subdivision (c) of Section 290 of the Penal Code, for violating
16 Section 245 or 273.5, subdivision (b) of Section ~~273a~~ 273a, or,
17 prior to January 1, 1994, paragraph (2) of Section ~~273a~~ 273a, of
18 the Penal Code, or for any crime for which the department cannot
19 grant an exemption if the person was convicted and the person has
20 not been exonerated.

21 (2) The criminal history information shall include the full
22 criminal record, if any, of those persons, and subsequent arrest
23 information pursuant to Section 11105.2 of the Penal Code.

24 (3) Except during the 2003–04 to the 2014–15 fiscal years,
25 inclusive, neither the Department of Justice nor the department
26 may charge a fee for the fingerprinting of an applicant who will
27 serve six or fewer children or any family day care applicant for a
28 license, or for obtaining a criminal record of an applicant pursuant
29 to this section.

30 (4) The following shall apply to the criminal record information:

31 (A) If the State Department of Social Services finds that the
32 applicant or any other person specified in subdivision (b) has been
33 convicted of a crime, other than a minor traffic violation, the
34 application shall be denied, unless the director grants an exemption
35 pursuant to subdivision (f).

36 (B) If the State Department of Social Services finds that the
37 applicant, or any other person specified in subdivision (b), is
38 awaiting trial for a crime other than a minor traffic violation, the
39 State Department of Social Services may cease processing the
40 application until the conclusion of the trial.

1 (C) If no criminal record information has been recorded, the
2 Department of Justice shall provide the applicant and the State
3 Department of Social Services with a statement of that fact.

4 (D) If the State Department of Social Services finds after
5 licensure that the licensee, or any other person specified in
6 paragraph (2) of subdivision (b), has been convicted of a crime
7 other than a minor traffic violation, the license may be revoked,
8 unless the director grants an exemption pursuant to subdivision
9 (f).

10 (E) An applicant and any other person specified in subdivision
11 (b) shall submit fingerprint images and related information to the
12 Department of Justice and the Federal Bureau of Investigation,
13 through the Department of Justice, for a state and federal level
14 criminal offender record information search, in addition to the
15 search required by subdivision (a). If an applicant meets all other
16 conditions for licensure, except receipt of the Federal Bureau of
17 Investigation's criminal history information for the applicant and
18 persons listed in subdivision (b), the department may issue a license
19 if the applicant and each person described by subdivision (b) has
20 signed and submitted a statement that he or she has never been
21 convicted of a crime in the United States, other than a traffic
22 infraction as defined in paragraph (1) of subdivision (a) of Section
23 42001 of the Vehicle Code. If, after licensure, the department
24 determines that the licensee or person specified in subdivision (b)
25 has a criminal record, the license may be revoked pursuant to
26 Section 1596.885. The department may also suspend the license
27 pending an administrative hearing pursuant to Section 1596.886.

28 (b) (1) In addition to the applicant, this section shall be
29 applicable to criminal convictions of the following persons:

30 (A) Adults responsible for administration or direct supervision
31 of staff.

32 (B) Any person, other than a child, residing in the facility.

33 (C) Any person who provides care and supervision to the
34 children.

35 (D) Any staff person, volunteer, or employee who has contact
36 with the children.

37 (i) A volunteer providing time-limited specialized services shall
38 be exempt from the requirements of this subdivision if this person
39 is directly supervised by the licensee or a facility employee with
40 a criminal record clearance or exemption, the volunteer spends no

1 more than 16 hours per week at the facility, and the volunteer is
2 not left alone with children in care.

3 (ii) A student enrolled or participating at an accredited
4 educational institution shall be exempt from the requirements of
5 this subdivision if the student is directly supervised by the licensee
6 or a facility employee with a criminal record clearance or
7 exemption, the facility has an agreement with the educational
8 institution concerning the placement of the student, the student
9 spends no more than 16 hours per week at the facility, and the
10 student is not left alone with children in care.

11 (iii) A volunteer who is a relative, legal guardian, or foster parent
12 of a client in the facility shall be exempt from the requirements of
13 this subdivision.

14 (iv) A contracted repair person retained by the facility, if not
15 left alone with children in care, shall be exempt from the
16 requirements of this subdivision.

17 (v) Any person similar to those described in this subdivision,
18 as defined by the department in regulations.

19 (E) If the applicant is a firm, partnership, association, or
20 corporation, the chief executive officer, other person serving in
21 like capacity, or a person designated by the chief executive officer
22 as responsible for the operation of the facility, as designated by
23 the applicant agency.

24 (F) If the applicant is a local educational agency, the president
25 of the governing board, the school district superintendent, or a
26 person designated to administer the operation of the facility, as
27 designated by the local educational agency.

28 (G) Additional officers of the governing body of the applicant,
29 or other persons with a financial interest in the applicant, as
30 determined necessary by the department by regulation. The criteria
31 used in the development of these regulations shall be based on the
32 person's capability to exercise substantial influence over the
33 operation of the facility.

34 (H) This section does not apply to employees of child care and
35 development programs under contract with the State Department
36 of Education who have completed a criminal record clearance as
37 part of an application to the Commission on Teacher Credentialing,
38 and who possess a current credential or permit issued by the
39 commission, including employees of child care and development
40 programs that serve both children subsidized under, and children

1 not subsidized under, a State Department of Education contract.
2 The Commission on Teacher Credentialing shall notify the
3 department upon revocation of a current credential or permit issued
4 to an employee of a child care and development program under
5 contract with the State Department of Education.

6 (I) This section does not apply to employees of a child care and
7 development program operated by a school district, county office
8 of education, or community college district under contract with
9 the State Department of Education who have completed a criminal
10 record clearance as a condition of employment. The school district,
11 county office of education, or community college district upon
12 receiving information that the status of an employee's criminal
13 record clearance has changed shall submit that information to the
14 department.

15 (2) Nothing in this subdivision shall prevent a licensee from
16 requiring a criminal record clearance of any individuals exempt
17 from the requirements under this subdivision.

18 (c) (1) (A) Subsequent to initial licensure, any person specified
19 in subdivision (b) and not exempted from fingerprinting shall, as
20 a condition to employment, residence, or presence in a child day
21 care ~~facility~~ *facility*, be fingerprinted and sign a declaration under
22 penalty of perjury regarding any prior criminal conviction. The
23 licensee shall submit fingerprint images and related information
24 to the Department of Justice and the Federal Bureau of
25 Investigation, through the Department of Justice, or to comply
26 with paragraph (1) of subdivision (h), prior to the person's
27 employment, residence, or initial presence in the child day care
28 facility.

29 (B) These fingerprint images for the purpose of obtaining a
30 permanent set of fingerprints shall be electronically submitted to
31 the Department of Justice in a manner approved by the State
32 Department of Social Services and to the Department of Justice,
33 or to comply with paragraph (1) of subdivision (h), as required in
34 this section, shall result in the citation of a deficiency, and an
35 immediate assessment of civil penalties in the amount of one
36 hundred dollars (\$100) per violation per day for a maximum of
37 five days, unless the violation is a second or subsequent violation
38 within a 12-month period in which case the civil penalties shall
39 be in the amount of one hundred dollars (\$100) per violation for
40 a maximum of 30 days, and shall be grounds for disciplining the

1 licensee pursuant to Section 1596.885 or ~~Section 1596.886~~. The
2 State Department of Social Services may assess civil penalties for
3 continued violations permitted by Sections 1596.99 and 1597.62.
4 The fingerprint images and related information shall then be
5 submitted to the department for processing. Within 14 calendar
6 days of the receipt of the fingerprint images, the Department of
7 Justice shall notify the State Department of Social Services of the
8 criminal record information, as provided in this subdivision. If no
9 criminal record information has been recorded, the Department of
10 Justice shall provide the licensee and the State Department of
11 Social Services with a statement of that fact within 14 calendar
12 days of receipt of the fingerprint images. If new fingerprint images
13 are required for processing, the Department of Justice shall, within
14 14 calendar days from the date of receipt of the fingerprint images,
15 notify the licensee that the fingerprints were illegible.

16 (C) Documentation of the individual's clearance or exemption
17 shall be maintained by the licensee, and shall be available for
18 inspection. When live-scan technology is operational, as defined
19 in Section 1522.04, the Department of Justice shall notify the
20 department, as required by that section, and notify the licensee by
21 mail within 14 days of electronic transmission of the fingerprints
22 to the Department of Justice, if the person has no criminal record.
23 Any violation of the regulations adopted pursuant to Section
24 1522.04 shall result in the citation of a deficiency and an immediate
25 assessment of civil penalties in the amount of one hundred dollars
26 (\$100) per violation per day for a maximum of five days, unless
27 the violation is a second or subsequent violation within a 12-month
28 period in which case the civil penalties shall be in the amount of
29 one hundred dollars (\$100) per violation for a maximum of 30
30 days, and shall be grounds for disciplining the licensee pursuant
31 to Section 1596.885 or ~~Section 1596.886~~. The department may
32 assess civil penalties for continued violations, as permitted by
33 Sections 1596.99 and 1597.62.

34 (2) Except for persons specified in paragraph (2) of subdivision
35 (b), the licensee shall endeavor to ascertain the previous
36 employment history of persons required to be fingerprinted under
37 this subdivision. If it is determined by the department, on the basis
38 of fingerprints submitted to the Department of Justice, that the
39 person has been convicted of a sex offense against a minor, an
40 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of

1 the Penal Code, or a felony, the State Department of Social
2 Services shall notify the licensee to act immediately to terminate
3 the person's employment, remove the person from the child day
4 care facility, or bar the person from entering the child day care
5 facility. The department may subsequently grant an exemption
6 pursuant to subdivision (f). If the conviction was for another crime
7 except a minor traffic violation, the licensee shall, upon notification
8 by the State Department of Social Services, act immediately to
9 either (1) terminate the person's employment, remove the person
10 from the child day care facility, or bar the person from entering
11 the child day care facility; or (2) seek an exemption pursuant to
12 subdivision (f). The department shall determine if the person shall
13 be allowed to remain in the facility until a decision on the
14 exemption is rendered. A licensee's failure to comply with the
15 department's prohibition of employment, contact with clients, or
16 presence in the facility as required by this paragraph shall result
17 in a citation of deficiency and an immediate assessment of civil
18 penalties by the department against the licensee, in the amount of
19 one hundred dollars (\$100) per violation per day for a maximum
20 of five days, unless the violation is a second or subsequent violation
21 within a 12-month period in which case the civil penalties shall
22 be in the amount of one hundred dollars (\$100) per violation for
23 a maximum of 30 days, and shall be grounds for disciplining the
24 licensee pursuant to Section 1596.885 or 1596.886.

25 (3) The department may issue an exemption on its own motion
26 pursuant to subdivision (f) if the person's criminal history indicates
27 that the person is of good character based on the age, seriousness,
28 and frequency of the conviction or convictions. The department,
29 in consultation with interested parties, shall develop regulations
30 to establish the criteria to grant an exemption pursuant to this
31 paragraph.

32 (4) Concurrently with notifying the licensee pursuant to
33 paragraph (3), the department shall notify the affected individual
34 of his or her right to seek an exemption pursuant to subdivision
35 (f). The individual may seek an exemption only if the licensee
36 terminates the person's employment or removes the person from
37 the facility after receiving notice from the department pursuant to
38 paragraph (3).

39 (d) (1) For purposes of this section or any other provision of
40 this chapter, a conviction means a plea or verdict of guilty or a

conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other ~~provision of law prohibiting the~~ admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) ~~(1) The State Department of Social Services shall not issue a criminal record clearance to a person with a record of an arrest prior to the department's completion of an investigation of that arrest record. The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The~~

~~(2) The department shall not issue a criminal record clearance to a person who has been arrested, and that arrest is pending investigation or conviction, for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a, of the Penal Code, or, prior to January 1,~~

1 1994, paragraph (2) of Section 273a, of the Penal Code, prior to
2 the department's completion of an investigation pursuant to
3 paragraph (1).

4 (3) The State Department of Social Services is authorized to
5 obtain any arrest or conviction records or reports from any law
6 enforcement agency as necessary to the performance of its duties
7 to inspect, license, and investigate community care facilities and
8 individuals associated with a community care facility.

9 (f) (1) After review of the record, the director may grant an
10 exemption from disqualification for a license or special permit as
11 specified in paragraphs (1) and (4) of subdivision (a), or for
12 employment, residence, or presence in a child day care facility as
13 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
14 director has substantial and convincing evidence to support a
15 reasonable belief that the applicant and the person convicted of
16 the crime, if other than the applicant, are of good character so as
17 to justify issuance of the license or special permit or granting an
18 exemption for purposes of subdivision (c). However, an exemption
19 ~~may~~ shall not be granted pursuant to this subdivision if the
20 conviction was for any of the following offenses:

21 (A) An offense specified in Section 220, 243.4, or 264.1,
22 subdivision (a) of Section ~~273a~~ 273a, or, prior to January 1, 1994,
23 paragraph (1) of Section 273a, Section 273d, 288, or 289,
24 subdivision (c) of Section 290, or Section ~~368~~ 368, of the Penal
25 Code, or was a conviction of another crime against an individual
26 specified in subdivision (c) of Section 667.5 of the Penal Code.

27 (B) A felony offense specified in Section 729 of the Business
28 and Professions Code or Section 206 or 215, subdivision (a) of
29 Section 347, subdivision (b) of Section 417, or subdivision (a) or
30 (b) of Section 451 of the Penal Code.

31 (2) The department ~~may~~ shall not prohibit a person from being
32 employed or having contact with clients in a facility on the basis
33 of a denied criminal record exemption request or arrest information
34 unless the department complies with the requirements of Section
35 1596.8897.

36 (g) Upon request of the licensee, who shall enclose a
37 self-addressed stamped postcard for this purpose, the Department
38 of Justice shall verify receipt of the fingerprint images.

39 (h) (1) For the purposes of compliance with this section, the
40 department may permit an individual to transfer a current criminal

1 record clearance, as defined in subdivision (a), from one facility
2 to another, as long as the criminal record clearance has been
3 processed through a state licensing district office, and is being
4 transferred to another facility licensed by a state licensing district
5 office. The request shall be in writing to the department, and shall
6 include a copy of the person's driver's license or valid
7 identification card issued by the Department of Motor Vehicles,
8 or a valid photo identification issued by another state or the United
9 States government if the person is not a California resident. Upon
10 request of the licensee, who shall enclose a self-addressed stamped
11 envelope for this purpose, the department shall verify whether the
12 individual has a clearance that can be transferred.

13 (2) The State Department of Social Services shall hold criminal
14 record clearances in its active files for a minimum of two years
15 after an employee is no longer employed at a licensed facility in
16 order for the criminal record clearances to be transferred.

17 (3) The following shall apply to a criminal record clearance or
18 exemption from the department or a county office with
19 department-delegated licensing authority:

20 (A) A county office with department-delegated licensing
21 authority may accept a clearance or exemption from the
22 department.

23 (B) The department may accept a clearance or exemption from
24 any county office with department-delegated licensing authority.

25 (C) A county office with department-delegated licensing
26 authority may accept a clearance or exemption from any other
27 county office with department-delegated licensing authority.

28 (4) With respect to notifications issued by the Department of
29 Justice pursuant to Section 11105.2 of the Penal Code concerning
30 an individual whose criminal record clearance was originally
31 processed by the department or a county office with
32 department-delegated licensing authority, all of the following shall
33 apply:

34 (A) The Department of Justice shall process a request from the
35 department or a county office with department-delegated licensing
36 authority to receive the notice, only if all of the following
37 conditions are met:

38 (i) The request shall be submitted to the Department of Justice
39 by the agency to be substituted to receive the notification.

1 (ii) The request shall be for the same applicant type as the type
2 for which the original clearance was obtained.

3 (iii) The request shall contain all prescribed data elements and
4 format protocols pursuant to a written agreement between the
5 department and the Department of Justice.

6 (B) (i) On or before January 7, 2005, the department shall notify
7 the Department of Justice of all county offices that have
8 department-delegated licensing authority.

9 (ii) The department shall notify the Department of Justice within
10 15 calendar days of the date on which a new county office receives
11 department-delegated licensing authority or a county's delegated
12 licensing authority is rescinded.

13 (C) The Department of Justice shall charge the department or
14 a county office with department-delegated licensing authority a
15 fee for each time a request to substitute the recipient agency is
16 received for purposes of this paragraph. This fee shall not exceed
17 the cost of providing the service.

18 (i) Notwithstanding any other ~~provision of~~ law, the department
19 may provide an individual with a copy of his or her state or federal
20 level criminal offender record information search response as
21 provided to that department by the Department of Justice if the
22 department has denied a criminal background clearance based on
23 this information and the individual makes a written request to the
24 department for a copy specifying an address to which it is to be
25 sent. The state or federal level criminal offender record information
26 search response shall not be modified or altered from its form or
27 content as provided by the Department of Justice and shall be
28 provided to the address specified by the individual in his or her
29 written request. The department shall retain a copy of the
30 individual's written request and the response and date provided.